THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22954 of 2005

Date: 03.01.2006

Between:

Seasons Health Care Limited and others.

.. PETITIONERS

AND

A.P.Health & Medical Housing & Infrastructure Development Corporation.

.. RESPONDENT

ORDER:

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The petitioners challenge the action of the 1st respondent in placing the orders for supply of bandage cloth, glass cloth and roller bandage on respondents 2 to 5, which were not selected in the tendering process. The 1st respondent issueda a tender notice, dated 22.06.2005, inviting tenders for procurement of the above said items. 16 Agencies, including the petitioners, respondents 2 to 5 and certain others, submitted their tenders. In the tender schedule, one of the conditions incorporated by the 1st respondent is that a tenderer must have an annual turnover of at least 2.5 lakhs. During the processing of tenders, six tenderers were disqualified, since they did not fulfil the condition of turnover. The petitioners state that they alone were declared as 'qualified tenderers' and in fact, orders were placed upon them for supply of the material at the lowest rates quoted by them. They pleaded that there is no justification on the part of the 1st respondent in placing the orders on respondents 2 to 5, which were not selected in the tendering process.

The 1st respondent has filed a counter affidavit stating, inter alia, that though the condition as to turnover was incorporated in the tender schedule, the same was relaxed, on account of the clarification given by the Commissioner of Industries, through memo, dated 08.08.2005. It is urged that the purpose of calling for tenders is only to ascertain minimum rates and on the basis of the rates that emerged out of it, orders will be passed on all the eligible tenderers. Respondents 2 to 5, who got themselves impleaded, put forward the same point of view.

Heard the learned counsel for the petitioner, the learned Standign Counsel for the 1st respondent and the learned counsel for respondents 2 to 5.

Ordinarily, the tenders are invited with an object of selecting an Agency for supplying material or undertaking any work. The purpose of issuing the tender notice by the 1st respondent appears to be somewhat different. Hitherto, the supply of the bandage cloth, glass cloth, roller bandage etc., to the Government Hospitals used to be on the basis of the linkage provided by the Commissioner of Industries. Since the process was not completed, the 1st respondent issued the tender notice. Here again, once the minimum rates are ascertained, the orders are liable to be placed on all the Agencies, which are declared eligible in the qualifying bids.

Admittedly, respondents 2 to 5 did not have the qualification of having annual turn over of 2.5 lakhs. Therefore, they were not empanelled in the tendering process. However, within a short time, the Commissioner of Industries issued a clarification that the condition as to turn over does not apply to the tenders in question. In view of this, the 1st respondent ought to have invited tenders once again. The Agencies, which did not submit their tenders, on account of this condition, would have availed the opportunity. However, no such steps were taken.

Once the writ petitioners alone were declared as eligible tenderers, the 1st

respondent ought to have placed the orders on those tenderers alone and ought to have taken further steps, in view of the clarification issued by the Commissioner of Industries. Therefore, the grievance of the petitioners cannot be said to be without any basis. Even now, it is not too late for the 1st respondent to resolve the controversy.

For the foregoing reasons, the Writ Petition is disposed of, directing that the 1st respondent shall undertake re-evaluation of the eligibility of the Agencies, to supply bandage cloth, glass cloth and roller bandage, by inviting individual applications or tenders though an open notification, without incorporating any condition as to minimum annual turn over. This process, however, shall be completed within a period of six (6) weeks from today. There shall be no order as to costs.

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03.01.2006

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